

Debate Over Dallas

After the Assassination: A Positive Appraisal of the Warren Report, by John Sparrow (Chilmark Press, 75 pp. Hardbound, \$3.95. Paperback, \$1.25), and *Accessories After the Fact: The Warren Commission, the Authorities and the Report*, by Sylvia Meagher (Bobbs-Merrill, 477 pp. \$8.50), while taking opposite views of the Commission's findings, suggest compelling reasons for a judicial review. Irwin Karp is a practicing attorney in New York City.

By IRWIN KARP

JOHN SPARROW IS PERTURBED by the public's failure to accept the Warren Report. He cites, and apparently accepts, one poll's finding that "most Americans considered that the Report was not to be trusted." The fault, he believes, lies not in the Report but in the "astorishingly successful" campaign of what he calls "demonologists"—i.e., those critics of the Warren Report whose theories, tactics, or tone of discourse offend his sensibilities. Sylvia Meagher is one of his demonologists.

If Mr. Sparrow intended his seventy-five-page essay to establish public acceptance of the Commission's conclusions, it is difficult to see how he could have expected to succeed. For one thing, his book is too brief to describe fairly, let alone rebut adequately the theories of the several antagonists he has challenged. In a four-page postscript he disposes not only of Mrs. Meagher's book but also of Josiah Thompson's *Six Seconds in Dallas*, both of which he received after his essay was completed. Moreover, he did not allow himself enough space to present evidence from the Commission's record to support his arguments. As he realizes, judging from his criticism of the "demonologists," a partisan's summary is a poor substitute for the testimony of a witness or the contents of a report.

The meagerness of *After the Assassination* is emphasized by Sylvia Meagher's *Accessories After the Fact*, which disappointed Mr. Sparrow. He said he "had hoped for an authoritative judgment from Mrs. Meagher, who has an unrivaled knowledge of the Report and Evidence." However, he passed judgment on "an admittedly hasty reading." Proceeding at a more deliberate pace, I found Mrs. Meagher's book a comprehensive statement of the case against the Warren Report—especially its fundamental conclusion: that only one man fired at President Kennedy and Governor Connally.

Mrs. Meagher is intensely critical of the Commission; indeed, Mr. Sparrow's charge of "vituperation" is sometimes

justified. But deep involvement on either side of the debate seems to lower the level of discourse. Mr. Sparrow raises similar objections to his other "demonologists," and they have equal cause to complain of him, for he is often snide, sarcastic, and insulting.

In any event, Mrs. Meagher makes a lucid and cogent analysis of the Commission's proceedings and findings. And, unlike Mr. Sparrow, she has presented considerable testimony and other evidence from the Commission's record—much of it not found in the published Warren Report—to buttress her contentions. Yet both books have one thing in common: neither is likely to produce a significant change in the public attitude toward the Warren Report.

There is no forum to judge the arguments made by Mrs. Meagher and her fellow critics or by those who defend the Warren Report. Many Americans and future historians are therefore likely to remain doubtful that the Commission's one-assassin theory is the complete answer, and equally doubtful of the critics' theory that two or more assassins fired at the President. Perhaps these doubts would be resolved by a new investigation that explored all the evidence relevant to both theories, heard witnesses the Commission did not call, and examined evidence it never saw. Mrs. Meagher makes a strong argument for such an inquiry.

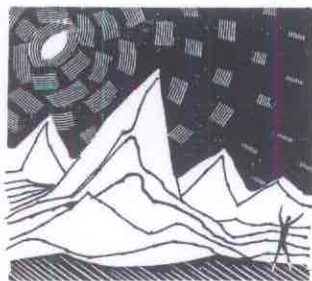
Thus far the debate on whether a new investigation should be held has been as inconclusive as that over the Report itself. Congress is not likely to pass a resolution about it; probably it is not the proper forum to do so. But it could place the issue before a special Court of Review composed of justices selected from each of the United States Courts of Appeal. The Court could review the Warren Report, as the Courts of Appeal and State appellate courts review decisions in criminal and civil trials and administrative agency proceedings. It could hear argument against the Report (by counsel designated to represent that view) and in support of the Report (by the Commission's counsel). It could decide on the basis of the argument and the record whether the Commission's findings were proven beyond a reasonable doubt, or by whatever less exacting standards it deemed appropriate. It could affirm the Commission's findings, in whole or in part, or report they should be set aside and a new investigation held. As part of the review procedure the Court could examine new evidence relevant to the issue of a new trial, such as the autopsy X-rays and photographs.

Defenders of the Report would argue that it is unnecessary even to consider whether a new investigation is required because the doubts raised by the critics

are specious. Perhaps the most compelling reasons for a judicial review are unrelated to the arguments made by Mrs. Meagher and her colleagues. But the doubts they raise about the Commission's findings are substantial. One of the values of Mrs. Meagher's book is its well-organized presentation of testimony and other evidence from the Commission's record. This, more than Mrs. Meagher's keen analysis, creates doubts that the Commission's conclusions are entirely correct.

Consider the Commission's finding that the assassination was the deed of one man. It depends heavily, if not entirely, on the theory that a single bullet 1) entered President Kennedy's back, 2) exited from his throat, 3) entered Governor Connally's back, 4) smashed a rib, 5) exited from his chest, 6) entered his wrist, 7) smashed a bone, 8) exited from his wrist, 9) penetrated his thigh, 10) disappeared, 11) reappeared on an empty stretcher in Parkland Hospital—all without being even slightly mutilated or deformed. If the theory is wrong, and the President and the Governor were wounded by separate bullets (as Governor Connally believes), then it is highly probable that there were two assassins, because the time interval between the wounds was much less than that required to reload and fire Oswald's rifle.

The bullet's remarkable performance is rendered highly dubious by the testimony and reports of doctors, FBI agents, and Secret Service agents included in the Commission's record. At the outset there is doubt that the bullet fired from above entered President Kennedy's back at a point high enough to travel downward, emerge from his throat, and enter



the Governor's back. FBI agents present at the autopsy reported that the bullet hole "was below the shoulders" and "about six inches below the neckline." Doubts persist about the bullet's subsequent journey until its ultimate mysterious reappearance in perfect condition. As one Parkland doctor testified, it would be difficult to explain how all of the wounds could be inflicted by the one bullet "without causing . . . deformation of the bullet."

The uncertainties about the Commission's one-assassin finding do not end with the single-bullet theory. Evidence in the Commission's record points to the possibility of a second assassin firing from in front of the car: the Zapruder film; indications that President Kennedy recoiled from a shot fired from the front; a number of witnesses (some never called by the Commission) who said they saw or heard shots from the grassy knoll to the car's front. The possibilities that Oswald was not on the sixth floor when the shots were fired, and that other key findings may be erroneous, are raised by the testimony Mrs. Meagher quotes, not by her rhetoric.

THE question of whether the Report should be reviewed by a special court does not depend merely on the strength of Mrs. Meagher's case against the Commission. Even in an ordinary murder trial the defendant is entitled, as a matter of course, to an appellate review of the trial court's verdict. While the Commission's investigation was not a trial in the conventional sense, it did pronounce a verdict of guilty on the dead Oswald. But here the very nature of the investigation makes a judicial review all the more desirable.

For one thing, the Warren Report is a judgment rendered by a Commission that heard few of the witnesses whose testimony appears in its record. Out of 489, only ninety-four gave evidence before the Commission; the majority made affidavits or depositions. Moreover, some of the Commissioners heard only a fraction of those who testified in person.

Furthermore, since the Commission considered itself a board of inquiry rather than a court, it decided to dispense with cross-examination. This was a fundamental error. As Dean Wigmore, the eminent authority on evidence, has emphasized, cross-examination "is beyond doubt the greatest legal engine ever invented for the discovery of truth." That the Warren Commission abandoned this essential tool in its search for the truth, and that the testimony it relied on was not tested by cross-examination, make it all the more appropriate that the Commission's Report be reviewed by an appellate court.

Finally, the Commission's findings are of great historical significance. The public, and future historians, are entitled to the corroboration which an appellate court's judgment of affirmance would add to the Report—if the justices should reach that result. If, however, they determine that the Commission's findings, in whole or in part, were not adequately proven, or that it failed to obtain or properly explore relevant evidence, the public and history are also entitled to know this, and Congress should then order a new investigation.